

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

**Proceeding on Motion of the Commission
as to the Rates, Charges, Rules and Regulations
of Consolidated Edison Company of New York,
Inc., for Electric Service.**

CASE 16-E-0060

**Proceeding on Motion of the Commission
as to the Rates, Charges, Rules and Regulations
of Consolidated Edison Company of New York,
Inc., for Gas Service**

CASE 16-G-0061

TESTIMONY OF ALFRED R. FUENTE, ESQ.
FOR
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.

Dated: May 27, 2016

TABLE OF CONTENTS

I. INTRODUCTION AND OVERVIEW 3

II. HEFPA VIOLATIONS..... 6

III. DUE PROCESS VIOLATIONS 14

IV. RECOMMENDATIONS TO RESTORE COMPANY COMPLIANCE 20

1 **I. INTRODUCTION AND OVERVIEW**

2 **Q. Please state your name, occupation, place of employment and business address.**

3 A. My name is Alfred R. Fuente, and I am an attorney. I own my own firm, Fuente &
4 Fuente, PLLC, which has offices in New York City at 30 Wall Street, 8th floor New
5 York, NY 10005, and also, in Miami at 1385 Coral Way, Suite 406, Miami, FL 33145. I
6 represent clients in a wide range of real estate-related and litigation matters and give
7 advice on corporate and business law matters.

8

9 **Q. What is your educational background and qualifications to practice law?**

10 A. I received my Juris Doctorate from American University, Washington College of Law in
11 2012. I have a Bachelor of Arts with a major in International Affairs from Florida State
12 University, where I studied from 1998 to 2002. I also obtained a Master of Arts in
13 Commercial Real Estate from the University of Paris I, Pantheon Sorbonne in 2007 and a
14 Master of Arts in National Politics & European Politics of the European Union Member
15 States from the University of Paris III, La Sorbonne Nouvelle in 2004. I was admitted to
16 practice law in New York in 2013.

17

18 **Q. What is your professional background and membership associations?**

19 A. Prior to working at Fuente & Fuente, PLLC, I was an Associate with Jajan & Associates,
20 PLLC, 40 Wall Street, 25th Floor, NY, NY 10005 in 2015 where I represented foreign
21 investors in the acquisition and disposition of real property in New York. From May
22 2013 through June 2015, I was employed in the Storm Response Unit at the New York
23 Legal Assistance Group (NYLAG) where I represented low-income New Yorkers

1 affected by Superstorm Sandy in foreclosure matters. NYLAG is a non-profit that
2 provides free assistance to low-income customers for civil matters.

3 I also served as Associate Director at Cushman & Wakefield in New York City and Paris,
4 France, from 2004 to 2009. In this capacity, I appraised in excess of \$20 billion worth of
5 real estate in New York City and Western Europe, including the Barclays Center Arena
6 in Downtown Brooklyn.

7 I am the Secretary of the Supreme Court Committee of the New York County Lawyers'
8 Association (NYCLA), and also, a member of the Real Property Section of the New York
9 City Bar Association. I am a member of the Royal Institution of Chartered Surveyors
10 (MRICS), a professional body that accredits professionals within the real property and
11 construction sectors worldwide. As of 2016, I joined the Board of Directors of the Public
12 Utility Law Project, the non-profit organization submitting this testimony on my behalf.

13

14 **Q. Have you previously testified before the New York State Public Service**
15 **Commission?**

16 A. No.

17

18 **Q. What is the nature of this testimony?**

19 A. I am testifying about what appears to be a pattern of decades-long violations by Con
20 Edison of the Home Energy Fair Practices Act (HEFPA), of the procedural and
21 substantive due process rights of Company customers and of CPLR 7102 concerning
22 replevin. The exemplar for exploring the patterns and practices of Con Edison's HEFPA
23 violations, due process violations and CPLR violations is a case I worked on concerning

1 a replevin action against a Brooklyn resident and utility customer of Con Edison's. I
2 brought this case before the Civil Court of the City of New York, County of Kings
3 located at 141 Livingston Street, Brooklyn, NY 11202 in 2014. In addition to presenting
4 the facts of the violations of law and process, I am also presenting the legal arguments I
5 made in that case as to the illegality of Con Edison's conduct in the context of that
6 replevin action. Finally, I am offering my professional opinion as to what safeguards
7 need to be put in place to assure that Con Edison is fully compliant with the law
8 concerning replevin actions and resumes compliance with HEFPA.

9
10 **Q. Are you sponsoring any exhibits?**

11 A. Yes, I am sponsoring two exhibits. Exhibit ____ (ARF-1) is nine pages. It consists of a
12 Notice of Application, which is dated August 26, 2014 and references an action with
13 Index No. 415543-14 in Civil Court of the City of New York County of Kings. Con
14 Edison is the named plaintiff and Sheryl Parker and John Doe are the named defendants.
15 Also included in Exhibit ____ (ARF-1) is an unsigned Affirmation, dated August 19,
16 2014, referring to the same action. This document appears to have been prepared by
17 Dean R. Brown, a Con Edison attorney. I have received permission from Ms. Parker to
18 use her name and information in this testimony and in this exhibit.

19 Exhibit ____ (ARF-2), entitled "Con Ed's Kangaroo Court: How a Private Company and
20 Our Public Courts Put NY Consumers in the Hot Seat," which was written by Jon
21 Campbell and consists of seven pages, is an article about the issues relevant to my
22 testimony that appeared in the Village Voice in its edition of April 6 – April 12, 2016.
23 An on-line version of the article can be found at <http://www.villagevoice.com/news/con->

1 [ed-s-kangaroo-court-how-a-private-company-and-our-public-courts-put-consumers-in-](#)
2 [the-hot-seat-8474874.](#)

3

4 **Q. Who is the Brooklyn resident client to whom you refer and how did you come to**
5 **represent her in this matter?**

6 A. While in the employ of NYLAG, I represented a client named Sheryl Parker, who was a
7 Con Edison customer located in Brooklyn at the time. After Hurricane Sandy hit New
8 York City on October 29, 2012, many of the electrical meters in her condominium
9 complex were rendered inoperable. Con Edison began estimating Ms. Parker's usage, but
10 the estimates fluctuated wildly month to month. Ms. Parker's attempts to clarify her
11 service bills were unsuccessful, and the balance on her account grew to over a thousand
12 dollars. Eventually, after 18 months of an extended dispute over "arrearages" stemming
13 from estimated readings, Con Edison threatened Ms. Parker with an Order of Seizure of
14 her electrical meter due to alleged non-payment of her utility bill. Ms. Parker retained me
15 as her counsel to challenge the merits of Con Edison's threat to terminate her utility
16 service and to seize her meter.

17

18 **II. HEFPA VIOLATIONS**

19 **Q. Can you please explain why you believe that Con Edison's actions in the context of**
20 **Ms. Parker's case violated HEFPA?**

21 A. HEFPA establishes the rights, duties and obligations of every public utility company
22 subject to the jurisdiction of the Public Service Commission by virtue of Articles 2, 4,
23 and 4-A of the Public Service Law. As such, HEFPA governs the termination

1 requirements of a public utility and acts to safeguard and prevent against unreasonable
2 termination of residential services by utilities.

3 In my opinion, Con Edison failed to meet the pre-termination statutory requirements and
4 procedures under HEFPA because the company's Notice of Application (see, Exhibit ____
5 (ARF-1)) mailed to Ms. Parker on August 26, 2014 did not comply with certain statutory
6 requirements. Specifically, section 11.5 of HEFPA provides special protections regarding
7 the termination of utility service "in cases involving medical emergencies, the elderly,
8 blind or disabled, and terminations...during cold weather." Under section 11.4(a)(9) of
9 HEFPA, if a utility knows a customer is receiving, or is applying for, public assistance,
10 the utility is required to notify the local Department of Social Services (DSS) of the
11 customer's name and address for DSS to help the customer if no payment plan is possible
12 prior to terminating the customer's service. Finally, under section 11.10(a)(1), prior to
13 terminating services, utilities are required to make diligent efforts by phone, mail, or in
14 person to offer customers a deferred payment agreement (DPA) and to negotiate terms
15 "tailored to the customer's financial circumstances."

16 Ms. Parker's threatened termination of utility service was improper because HEFPA
17 generally prohibits the termination of utility services if a resident has a medical
18 emergency, as was the case here. Furthermore, Con Edison did not make a diligent effort
19 to contact Ms. Parker to offer her a DPA as required under HEFPA. In the unsigned
20 Attorney Affirmation (see, Exhibit ____ (ARF-2)) that was mailed along with the Notice
21 of Application to Ms. Parker, Con Edison contended that it offered Ms. Parker a DPA,
22 but it failed to provide any specifics or details of that plan. Also, Con Edison's actions
23 violated HEFPA by threatening a termination of heat-related service during the winter. In

1 the unsigned Attorney Affirmation, Con Edison affirmed that “the termination will affect
2 heat-related service” and contended that it “has taken all actions required by section 32 of
3 the Public Service Law,” but it did not detail a single precaution or action taken by the
4 Company.

5

6 **Q. Would you describe the salient part of the Notice of Application in more detail?**

7 A. The Notice of Application required Ms. Parker to obtain a hearing date from the Civil
8 Court of the City of New York, County of Kings located at 141 Livingston Street,
9 Brooklyn, NY 11202 within 15 days of the date of service, or else the Company would
10 ask the Court to issue an Order of Seizure of her electrical meter.

11

12 **Q. In your opinion, did the Notice of Application conform to the requirements of**
13 **HEFPA?**

14 A. No. The Notice of Application threatened conduct that would have resulted in
15 unreasonable termination of her service. Ms. Parker qualified for special protections
16 under HEFPA because of the medical condition in her household; and also, the Company
17 was required to offer her a written DPA before threatening termination. None of these
18 requirements were met prior to her receipt of the Company’s termination notice. And the
19 Company’s Notice of Application, seems to undermine the purpose of HEFPA which is
20 to protect against unreasonable termination of service.

21

22 **Q. How does the Company’s Notice of Application undermine the purpose of HEFPA?**

1 A. The Notice of Application requires the customer to obtain what is called a “hearing date”
2 so that the customer can be “heard” on the replevin matter; however, the actual “hearing”
3 that the customer ultimately schedules with the court is not in fact, a hearing with a
4 Judge.

5 **Q. If this “hearing” is not before a judge, what is the nature of this hearing?**

6 A. The hearing date is actually a meeting with Con Edison representatives inside the
7 courthouse.

8

9 **Q. How did you learn that the hearing date is a date for a meeting with the Company**
10 **and not with a judge?**

11 A. After Ms. Parker obtained a hearing date from the Civil Court of the City of New York,
12 County of Kings located at 141 Livingston Street, Brooklyn, NY 11202 for October 31,
13 2014, I visited the Clerk’s Office of the Brooklyn civil courthouse to confirm certain
14 procedural due process had been met by Con Edison. On September 22, 2014, I spoke
15 with the Clerk’s office on the ninth floor, as well as the Clerk’s office on the third floor. I
16 asked the clerks located on these floors for the affidavit of service and other court papers
17 filed by Con Edison in Ms. Parker’s matter. The clerks I spoke with replied that Con
18 Edison did not file any affidavits of service or any other papers whatsoever pertaining to
19 Ms. Parker’s replevin action. The clerks informed me that Con Edison never files any
20 affidavits of service or papers of this sort because the company files hundreds of possible
21 claims at once and the paperwork would therefore be too cumbersome for the Court’s
22 staff. Both clerks advised me to contact Con Edison directly for the affidavits of service,

1 summonses and complaints, or any other legal documents related to Ms. Parker's action
2 in replevin.

3 On October 3, 2014, I called the Office of the Clerk at the Brooklyn civil courthouse to
4 inquire again about Ms. Parker's replevin hearing scheduled for October 31, 2014. I
5 specifically asked the clerk about the return date and the Part number for the Defendant's
6 Opposition to Plaintiff's Notice of Application. The clerk told me that Ms. Parker's case
7 was not set for litigation and, therefore, there was no return date. The clerk also explained
8 the upcoming October 31, 2014 "hearing date" would not be before a judge. Rather, the
9 "hearing date" is actually an informal meeting at the courthouse between the consumer
10 and a representative from Con Edison. According to this clerk, the Court allows these
11 conferences as a courtesy to the utilities.

12 The clerk further explained that at this informal conference, the consumer usually agrees
13 to a payment plan but in the rare instances that the parties cannot agree to a payment plan,
14 then, the consumer can go to the Special Term window and obtain an Order to Show
15 Cause. Only when the consumer obtains an Order to Show Cause does the litigation
16 begin, and the case would appear on the Court Calendar, with a return date, at that point.
17 She also told me that if the consumer fails to schedule one of these "hearing dates" for an
18 informal meeting with Con Edison, or fails to show up on the "hearing date," or agrees to
19 a payment plan on the "hearing date" as a result of the informal meeting with the
20 company and then, defaults on that payment plan, then, the Court will automatically enter
21 an Order for Seizure and the City Marshal would be contacted to seize the consumer's
22 meter. Finally, the clerk advised me that hearings for actions in replevin, like Ms.

1 Parker's case, always take place on Fridays, beginning at 2:00pm, in Room 306 of that
2 courthouse.

3

4 **Q. Did you visit Room 306 at the Brooklyn civil courthouse on Livingston St.?**

5 A. Yes, I visited Room 306 twice. The first time, I went to Room 306 on October 10, 2014
6 in order to better understand the nature of these informal meetings with the Company in
7 advance of my client's appearance at her scheduled "hearing date" on October 31, 2014.

8

9 **Q. Please describe what you saw when you arrived at Room 306 inside the Brooklyn**
10 **civil courthouse on Livingston Street on October 10, 2014.**

11 A. Room 306 is on the third floor of the Brooklyn civil courthouse. The entrance of the
12 room beside a larger courtroom that was empty. Inside the room, I could see two
13 representatives from Con Edison. One was wearing a Con Edison polo shirt while the
14 other person was dressed in plain clothes. Outside of the room, there were approximately
15 12 to 15 individuals sitting in the gallery area of the courthouse. There was a clipboard
16 with an 8 1/2" x 11" paper on which people could sign their names with a pen. To the best
17 of my recollection, the paper attached to the clipboard read in all-caps as follows: "YOU
18 ARE PARTICIPATING IN A VOLUNTARY CONFERENCE WITH
19 REPRESENTATIVES OF CON EDISON...PLEASE PRINT YOUR NAME CLEARLY
20 ABOVE ON SIGN IN. If you are unable to reach a settlement at your conference or if
21 you do not wish to participate, please advise the Clerk's office and your case will be
22 scheduled for a hearing."

23

1 **Q. Was there a judge present?**

2 A. No, I did not see a judge present, or any other court supervision during my visit to Room
3 306 on this day.

4

5 **Q. Were you able to go inside of Room 306 and speak with the Con Edison
6 representatives and watch a meeting with one of the utility customers on that day?**

7 A. No, the meetings are held in private and I did not speak to the Con Edison representatives
8 during my visit to room 306 on October 10, 2014.

9 **Q. Did you speak with any of the people waiting outside of room 306 that day?**

10 A. Yes. I asked a few of the consumers that exited the hearings about what they discussed
11 with the Con Ed representatives.

12

13 **Q. Please recall the conversations you had with these customers.**

14 A. I recall one consumer telling me that she received Social Security Disability income and
15 was unemployed and was facing termination of her electricity due to non-payment.

16 Another consumer explained to me that she had no choice but to agree to a payment plan
17 with Con Edison because electricity was essential and she could not live without it.

18

19 **Q. What time did the meetings end in Room 306?**

20 A. The meetings ended by 3:00 pm.

21

22 **Q. All customers waiting for a meeting with Con Edison in room 306 on that day were
23 seen between 2 pm and 3 pm?**

1 A. Yes.

2

3 **Q. When else did you visit room 306 in the Brooklyn civil courthouse on Livingston**
4 **Street?**

5 A. I accompanied Ms. Parker to her October 31, 2014 scheduled hearing date. We arrived at
6 Room 306 around 1:30 pm on that day.

7

8 **Q. Was there a judge present on October 31, 2014?**

9 A. No. Like the previous visit to Room 306 on October 10, 2014, at the time of the hearing,
10 the adjourning courtroom to the room was empty and there was no judge present.

11

12 **Q. Were other people waiting outside for a meeting with Con Edison?**

13 A. Yes, there were about a dozen people there.

14

15 **Q. How many Con Edison representatives were there?**

16 A. Two or three.

17

18 **Q. Please describe the meeting you had with Con Edison on October 31, 2014.**

19 A. The Con Edison representatives called Ms. Parker's name, and we entered Room 306.
20 During the meeting, we had a discussion about the alleged debt Ms. Parker owed to Con
21 Edison. We did not reach a resolution of the matter. I remember the attorney for Con
22 Edison stating that the meeting is "adjourned."

23

1 **Q. How long did the meeting take place?**

2 A. Ten to fifteen minutes.

3

4 **Q. Describe the activities involving your representation of Ms. Parker after this**
5 **hearing on October 31, 2014.**

6 A. On November 14, 2014, I filed a Defendant's Order to Show Cause requesting the Court
7 to deny Con Edison's Notice of Application on the basis that it was procedurally
8 defective under several provisions of CPLR § 7102 and § 308, violated statutory
9 requirements set forth under the HEFPA, and on the grounds that Ms. Parker had been
10 denied due process under federal and state law.

11

12 **Q. Did the Court provide the relief you were seeking?**

13 A. Con Edison opted to settle the matter with Ms. Parker prior to the Court's response.

14

15 **III. DUE PROCESS VIOLATIONS**

16 **Q. Why do you believe it is important for customers to have a hearing in front of a**
17 **judge?**

18 A. Under the 1976 case of *Mathews v. Eldridge*, a seminal due process heard by the U.S.
19 Supreme Court, the Court held that before one's property or other private interest is
20 terminated by government action, one must receive a hearing unless the burden of
21 providing the hearing outweighs the harm caused by the deprivation. Here, losing
22 heat/power makes an apartment uninhabitable and the customer homeless, which
23 arguably substantially outweighs the burden of providing HEFPA and CPLR 7102's

1 clearly stated process. It is necessary to have judicial supervision or oversight in these
2 meetings concerning replevin actions because it is required by law, and actually, it is
3 what Con Edison promises will occur in the Notice of Application once the customer
4 schedules a “hearing date” with the court.

5

6 **Q. Please briefly state the *Mathew*’s court due process analysis.**

7 A. The *Mathew*’s court analyzed due-process rights in three parts. Part one of the due
8 process analysis requires identification of the specific private interest to be affected by
9 the official action. Part two of the due process analysis asks the Court to evaluate whether
10 the property will be taken in error because of the procedures in place and if other
11 safeguards could be added or substituted to prevent the taking from occurring by mistake.
12 Part three of the analysis requires the court to evaluate the administrative burden to the
13 government associated with additional process.

14

15 **Q. What procedures of Con Edison did you argue would cause Ms. Parker’s meter to
16 be in taken in error?**

17 A. I argued that the meeting conducted solely by Con Edison in Room 306 of the Brooklyn
18 civil courthouse on October 31, 2014, did not provide Ms. Parker with an opportunity to
19 be heard. Although Con Edison’s Notice of Application stated that Ms. Parker would
20 have an opportunity to be heard before a judge, there was no judge or neutral arbiter
21 present to consider any of her defenses; nor did there appear to be an Officer of the Court
22 present. Although Ms. Parker had the opportunity to petition the Court for an Order to
23 Show Cause and to be heard before a court of law after she attended the meeting with

1 Con Ed's attorneys at the courthouse, I argued that this is an insufficient opportunity to
2 be heard under controlling case law.

3

4 **Q. Can you please describe the format and contents of the Notice of Application**
5 **received by your client?**

6 A. The Notice of Application appeared to a lay reader to be court papers. It contained a
7 caption, an index number, and informed Ms. Parker that she had the right to be heard on
8 the matter, would have the right to a hearing before a judge, and would have an
9 opportunity to refute the bill. It also stated that before the hearing with a judge, she could
10 try to settle the dispute at a voluntary informal conference with a Con Edison
11 representative at the courthouse. The notice also advised Ms. Parker to obtain a hearing
12 date or risk losing by default.

13

14 **Q. You mentioned in your earlier testimony that there was a sign-in sheet provided to**
15 **all customers, including your client, right outside of Room 306 and that the sign-in**
16 **sheet specified that by signing the sheet, the person would be participating in a**
17 **voluntary conference with representatives of Con Edison. Why is this insufficient**
18 **notice as to the nature of the meeting with the Company?**

19 A. I think the sign-in sheet inviting customers to participate in a voluntary conference with
20 representatives of Con Edison is insufficient to overcome the appearances of the court-
21 like Notice of Application sent to customers beforehand, and of the court proceeding
22 itself. Although Con Edison is offering what they typify to be a voluntary conference,

1 what actually occurs in Room 306 explicitly contradicts the information in the Notice of
2 Application.

3

4 **Q. How does the voluntary conference in Room 306 contradict the information in the**
5 **Notice of Application?**

6 A. The Notice of Application requires that the customer call the court to arrange a hearing
7 date, will have the right to a hearing before a judge, and will have an opportunity to
8 refute the bill and also says that the customer may, if she wishes, have an informal
9 meeting with Con Edison prior to the hearing to settle the matter. But, in fact, when Ms.
10 Parker requested a hearing date with the Court, as required by Con Edison's Notice of
11 Application, unbeknownst to her, she was actually making a date to have an informal
12 conference with Con Edison, and would not be seeing a judge on that day. The meeting in
13 Room 306 between my client and Con Edison was in a courthouse, and adjacent to a
14 courtroom, but there was never a judge present. This is why I argued that the process in
15 place can likely result in the erroneous deprivation of my client's significant property
16 interest in her electricity service.

17

18 **Q. Are the circumstances in Ms. Parker's case unique to her?**

19 A. Unlikely. As I stated in earlier testimony, one of the clerks told me that the process
20 occurring in Brooklyn had been happening for years and also, that it is rare that these
21 replevin matters proceed to litigation. This means that most customers do not actually
22 make an Order to Show Cause with the Court after having an informal meeting in Room
23 306. So, either customers are walking out of Room 306 with the anticipation of having

1 their meter seized, or more likely, they made an arrangement with Con Edison to pay
2 whatever debt the company claims the customer owes. Without judicial supervision, we
3 have no way of knowing whether customers are getting the full protection provided under
4 HEFPA.

5 Additionally, I have reviewed the Company's response to PULP's information request
6 No.59 which asked the Company to provide the most recent meter seizure orders, and the
7 papers upon which they were granted, from each of the courts in the Company's service
8 areas. The Company provided non-confidential copies of the most recent meter seizure
9 orders and/or related papers for Bronx County, Kings County, New York County, Queens
10 County, and Westchester County. In my review, I noticed that the "Notice of
11 Application" that was mailed to my client is substantially similar in form and substance
12 to the "Notice of Application" included in the Company's responses for each of the
13 counties. This means that in Kings County the use of the Notice of Application and the
14 room on Livingston Street is still actively used for "hearing" regarding meter seizure.
15 And the use of the "Notice of Application" in other counties suggests that similar
16 arrangements are made with the courts there to host "hearings" much like they are done
17 in Kings County.

18 HEFPA caps monthly repayment installments at 10 percent of the amount owed, or 50
19 percent of the average monthly bill, whichever is higher. Customers might be agreeing to
20 pay far more than the law might have required. It is the judge's role to inform individuals
21 of their rights. Without a judge present, the customer has no way of making an informed
22 decision prior to agreeing to a payment plan with the Company to avoid replevin of her
23 meter. Ms. Parker was fortunate to have had representation, but none of the other

1 customers waiting in front of Room 306 appeared to have attorney representatives with
2 them. This means that the conferences in Room 306 are heavily weighted in Con Ed's
3 favor. When I was in the room, I argued on behalf of my client, calling into question the
4 stated amount of debt which was inconsistent across different documents Ms. Parker had
5 been mailed. My questions were able to thwart Con Edison's attempt to have my client
6 pay an amount that the Company itself could not prove she owed, but judicial supervision
7 or oversight is needed to ensure that all customers, represented or not, are only accepting
8 terms or conditions of the company that are based on actual proof and substantiated fact,
9 and that are defensible under law.

10
11 **Q. What happens if a customer rejects a payment plan offered by the Company?**

12 A. As stated in Con Edison's Notice of Application, if the customer rejects a payment plan,
13 or does not schedule a hearing with the court, then, Con Edison can present an Order of
14 Seizure to a judge, who then signs the order without any input from the customer. The
15 Company would control most if not all of the information, from electric bills to court
16 papers, related to the matter because as I testified earlier, the company never files these
17 "cases" with the court. This means that Con Ed's recitation of facts can proceed
18 unquestioned at the hearing for the Order of Seizure. If Con Ed succeeds at replevying a
19 customer's electric meter and shutting off the power, the customer will be required to pay
20 the company the entire amount in dispute.

21
22 **Q. Do you have any knowledge of Con Edison conduct in replevin actions in other**
23 **courthouses besides the Brooklyn civil courthouse on Livingston Street?**

1 A. Yes. Another attorney at NYLAG, Kevin Thomas, witnessed this same process happen in
2 the Bronx. He was actually quoted in the same Village Voice article I described earlier
3 (Exhibit ___ (ARF-2)).
4

5 **Q. Do you know how many meetings like the one you had with your client occur in**
6 **Room 306 a year?**

7 A. No. However, the Village Voice article reported that 284 meetings were held in February
8 alone, according to a Con Edison spokesperson and a spokesperson for the court said
9 these meetings have been occurring for decades.
10

11 **IV. RECOMMENDATIONS TO RESTORE COMPANY COMPLIANCE**

12 **Q. How can the Company change its current practice to restore due process rights and**
13 **conduct its activities in full compliance with HEFPA and the CPLR?**

14 A. One, Con Edison must stop sending customers Notice of Application documents because
15 they have the appearance of court papers, but are actually devoid of any legal authority.
16 Two, the Company should not host meetings, even voluntary ones, inside a room in a
17 courthouse with customers without a judge or court attorney present, because the location
18 of the meeting implies a judicial process that is court-sanctioned. Instead, any informal
19 meetings prior to an actual hearing concerning replevin actions should be held at another
20 location other than a courthouse, and not scheduled through the court clerk. Finally, all
21 court papers relevant to replevin matters need to be filed with the Office of the Clerk of
22 the Court.
23

1 **Q. Does this conclude your direct testimony?**

2 A Yes.